here, for the reasons to have been stated in the grounds of judgment. With this view I am unable to agree for, in terms of the provision of sub-section (iii) to section 307 of the Criminal Procedure Code, the grounds of decision are only required to be made after a notice of appeal has been lodged. Proceedings which occurred after notice of appeal has been lodged do not form part of the trial itself. In the event, the sentence of the court below was varied and substituted with a sentence of a fine of $2,000. As the appellant had already paid $500 there will be an order, on an application made by him, that the balance of $1,500 be paid by instalment of $250 each with effect from the 1st October, 1965, upon the execution of the usual bond with two sureties by the appellant.

Sentence of court below varied.

THAMBIAH v. THE QUEEN

[P.C. (Lord Reid, Lord Morris of Borth-Y-Gest, Lord Hodson, Lord Pearce and Lord Wilberforce) October 7, 1965]

[Privy Council Appeal No. 9 of 1963]

Criminal Law and Procedure — Evidence — Volunteered statement — Accused in custody — Statement between interrogations — Not in answer to questions by police — Whether made in course of police investigation Criminal Procedure Code (Ceylon), s. 122(3).

The appellant and four others were charged with conspiracy to make fraudulent use of two forged cheques. After the commencement of investigations but not during any actual interrogation or in answer to any question the appellant told a police officer while they were climbing stairs to his office that he had signed a certain letter (which was signed with the name "H.B. Mendis") and that he had written several signatures of "H.B. Mendis" on two pieces of paper that were found in his possession when he was arrested. When he volunteered this information the appellant was in custody and he was interrogated both before and after they climbed the stairs. The appellant was convicted of abetting another accused in fraudulently using as genuine one of the two forged cheques and his appeal to the Supreme Court of Ceylon against this conviction was dismissed. One of the two grounds of his appeal to the Judicial Committee of the Privy Council was that evidence of his statements was admitted contrary to the provisions of section 122(3) of the Ceylon Criminal Procedure Code the material part of which reads, "No statement made by any person to a police officer or an inquirer in the course of any investigation under this Chapter shall be used otherwise than to prove that a witness made a different statement at a different time or to refresh the memory of the person recording it."†

Held: the statement is inadmissible as being a "statement made by any person to a police officer or an inquirer in the course of any investigation" under Chapter XII of the Ceylon Criminal Procedure Code. To hold that information volunteered at any time between the beginning and end of the investigation may be excluded from the protection of section 122 would in practice defeat the purpose of the section and encourage the mischief against which it is clearly aimed.

[Editorial Note: The other ground of appeal was that there was no sufficient evidence to support the conviction but the observations of the Judicial Committee on this ground are not reproduced in this report.]

Cases referred to:—

(1) *R.* v. *Ramasamy* [1965] A.C. 1; [1964] 3 W.L.R. 632; Noted in [1965] 1 M.L.J. at p. ix.

(2) *R. v. Harmanisa* (1944), 45 N.L.R. (Ceylon) 532 at p. 537.

PRIVY COUNCIL.

E. F. N. Gratiaen, Q.C. and *Dick Taverne*, Q.C. for the appellant.

Mark Littman, Q.C., *Tom Kellock*, Q.C. and *E. Cotran* for the respondent.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by,

Lord Pearce (referred to facts proved by other witnesses which showed conclusively the appellant's intention to open by fraudulent means an account at a bank for another accused under the assumed name of 'Piyadasa' and a false description, an intention which in due course he achieved. This accused presented one of the cheques in question for payment into the account but upon suspicions being aroused he vanished from the premises. His Lordship continued):

In addition to the above matters, there was evidence that some time previously the appellant had made enquiries about opening an account at another bank (the National and Grindlay's Bank), and there was found in the possession of the fourth accused, the forger, a typed letter vouching a Mr. Piyadasa for the purpose of opening an account at that bank. This letter was signed "H.B. Mendis" but Mr. Mendis who was a customer of the bank had not in fact signed it. The appellant admitted to the police that he had signed this document, and he admitted also writing several signatures "H.B. Mendis" on two pieces of paper that were found in his possession when he was arrested. These admissions were given in evidence.

At the time of the trial there was some authority which appeared to justify the reception of these admissions. But the case of *R.* v. *Ramasamy* (1) has subsequently shown that these admissions should have been excluded. The objection at the trial was based on the ground that the admissions were confessions made to a police officer and as such inadmissible under the Evidence Act section 25(1); but the court held that they were not confessions*. Before their Lordships the only point taken with regard to the admissions was that on the authority of *R.* v. *Ramasamy, supra*, they were inadmissible by

† These provisions appear in Chapter XII of the Ceylon Code which corresponds to Chapter XIII of the Singapore and Malay States Criminal Procedure Codes. See sections 121(1) and 113(i) of the Singapore and Malay States Codes respectively.

* See *Anandagoda* v. *R.* [1962] M.L.J. 289; [1962] 1 W.L.R. 817.

virtue of section 122 of the Criminal Procedure Code as being a "statement made by any person to a police officer or an inquirer in the course of any investigation" under Chapter XII of the Code.

Undoubtedly this submission is correct. Mr. Littman attempted to save the admissibility of the evidence by a suggestion that the statements appear on the evidence to have been made, not during the actual interrogation or in answer to any question, but as information volunteered to the police officer while they were climbing the stairs to his office. The appellant was however in custody at the time, and he was interrogated both before and after they climbed the stairs. Mr. Littman's suggestion thus really amounts to a contention that the statement was made between two investigations, a proposition which their Lordships cannot accept.

To hold that information volunteered at any time between the beginning and end of the investigation may be excluded from the protection of section 122 would in practice defeat the purpose of the section and encourage the mischief against which it is clearly aimed. Nor do the words of the section justify such an interpretation. The protection endures "during the course of the investigation" that is to say from the time when the investigation starts to the time when it ends, and a report is made under section 131‡. Their Lordships accept the view expressed by Howard C.J. (Ceylon) in *R.* v. *Haramanisa*: (2)

"The investigation made by a police officer or inquirer under this chapter covers a wide field and is not limited merely to the examination of persons by the putting of questions. The investigation includes the search for incriminating evidence and the examination of the *locus in quo* and and the locality in the vicinity of the scene of the crime. A statement made by any person to a police officer who was so engaged would, in our opinion, be made in the course of any investigation."

Thus the evidence was wrongly admitted. Had this case been tried by a jury, its effect on their minds and the degree to which, if at all, it might have affected their verdict would be a matter of speculation. But here their Lordships have the learned judge's careful reasons to guide them in estimating its effect. It is clear that he did not regard it as being of any importance. In his long judgment he makes no mention of the fact that the appellant admitted having written the signature on the type-written letter to the bank which was found in the forger's possession. The admission that the appellant wrote the signatures found in his own possession is mentioned casually as a matter of little or no account. It would seem that the learned judge, who heard and disbelieved the appellant's evidence, preferred his own findings and inferences based on the evidence of truthful witnesses to anything that might fall from the lips of the appellant. The facts proved by other witnesses show conclusively the appellant's intention to open by fraudulent means an account for the first accused under a false name and description, an intention which in due course he achieved. The admission of an earlier inchoate step towards that end adds nothing. Thus the evidence erroneously admitted had no effect upon the verdict and there is no justification for disturbing that verdict by reason of its admission.

There remains the question whether the learned judge was entitled to find in the facts relating to the bank account sufficient evidence that the appellant had abetted the first accused in his fraudulent use of the forged cheque.

[*His Lordship then reviewed the other evidence and concluded:*]

In their Lordship's opinion therefore there was sufficient evidence to justify the verdict. Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed.

Appeal dismissed.

Solicitors: *A. L. Bryden & Williams; T. L. Wilson & Co.*

‡ Section 131 of the Criminal Procedure Code of Ceylon provides:

"Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed the officer in charge of the police station or inquirer making the same shall forward to the Magistrates's Court within whose division such investigation was made a report in the prescribed form."

SEVEN SEAS SUPPLY CO. v. RAJOO

[F.C. (Tan Ah Tah Ag.C.J. (Singapore), Buttrose and Ambrose JJ.) October 7, 1965]

[Singapore — Federal Court Civil Appeal No. 39 of 1965]

Practice and procedure — Civil trial — Pleadings — Allegation that contract is illegal.

The appellants appealed against the decision of the learned trial judge, who had given judgment against the appellants for $7,000 and costs on a claim for money lent to the appellants. On appeal it was argued that (a) the judge had decided the case on issues not raised on the pleadings; (b) on the evidence the learned judge ought to have found that the plaintiff was a money lender and that the loans were illegal and not recoverable by him.

Held: (1) the core and essence of the claim was for money lent and the judgment was within the four corners of the issues raised by the pleadings as a whole. The learned judge had in effect in this case found that the particulars of the plaintiff's claim were wrong and had accepted those contended for by the defendants;

(2) as the defence of illegality was not pleaded and as all the relevant facts on this issue were not before the court, the court ought not on its initiative to refuse to enforce the contract on the ground of illegality.

Cases referred to:—

(1) *Kiaw Aik Hang Co. Ltd.* v. *Tan Tien Choy* [1964] M.L.J. 99.

(2) *Edler* v. *Auerbach* [1949] 2 All E.R. 692.